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Right of peoples to self-determination

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Report of the Secretary-General

Summary

In its resolution 67/157, the General Assembly requested the Secretary-General to report to the Assembly at its sixty-eighth session on the universal realization of the right of peoples to self-determination. The present report is submitted in accordance with that request.

The report outlines the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination. It also provides a summary of the developments relating to the consideration by the Human Rights Council of the subject matter, including by its special procedures and the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.

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I. Introduction

1. The General Assembly, in its resolution 67/157, reaffirmed the importance of the universal realization of the right of peoples to self-determination for the effective guarantee and observance of human rights. The Assembly welcomed the progressive exercise of the right to self-determination by peoples under colonial, foreign or alien occupation and their emergence into sovereign statehood and independence.

2. The present report is submitted in accordance with paragraph 5 of the resolution, in which the General Assembly requested the Human Rights Council to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation, and with paragraph 6, in which the Assembly requested the Secretary-General to report on the question at its sixty-eighth session.

3. The report provides a summary of the main developments relating to the realization of the right to self-determination within the framework of the activities of the United Nations human rights mechanisms since the submission of the last report (A/67/276). This includes concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights based on their consideration of the periodic reports submitted by the States parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in respect of the implementation of the right to self-determination guaranteed in article 1 of the two Covenants.

4. The report also incorporates the consideration of the question by the Human Rights Council, including observations made in reports submitted to the Council by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and the Special Rapporteur on the Rights of Indigenous Peoples. Finally, it summarizes the conclusions regarding implications of Israeli settlements on the rights of Palestinians to self-determination reached by the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, established by the Human Rights Council in its resolution 19/17.

II. Human Rights Committee and Committee on Economic, Social and Cultural Rights

5. Article 1, paragraph 1, of the International Covenant on Civil and Political Rights, and article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights affirm the right of all peoples to self-determination. Article 1, paragraph 2, of the two Covenants affirms a particular aspect of the economic content of this right, namely the right of peoples, for their own ends, to "freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law". It further provides that "[i]n no case may a people be deprived of its own means of subsistence". Article 1, paragraph 3, of the two Covenants imposes upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust

Territories, the obligation to promote the realization of the right to self-determination and to respect it, in conformity with the provisions of the Charter of the United Nations, in particular with Article 1, paragraph 2.

6. The right to self-determination has been addressed by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in their consideration of States parties' periodic reports submitted respectively under article 40 of the International Covenant on Civil and Political Rights and articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. The relevant concluding observations adopted during the period under review are highlighted below.

A. Concluding observations by the Human Rights Committee

7. During the reporting period, the Human Rights Committee addressed several issues related to the right to self-determination of indigenous peoples in Belize, Kenya and Peru.

8. In its concluding observations on the report of Kenya, the Committee expressed concern at reports of forced evictions, interference and dispossession of ancestral land by the Government from minority communities, such as the Ogiek and Endorois communities, who depend on it for economic livelihood and to practise their cultures. The Committee recommended that, in planning its development and natural resource conservation projects, the State party respect the rights of minority and indigenous groups to their ancestral land and ensure that their traditional livelihood that is inextricably linked to their land is fully respected. In this regard, the State party should ensure that the inventory being undertaken by the Interim Coordinating Agency with a view to obtaining a clear assessment of the status and land rights of the Ogiek community be participatory and that decisions be based on free and informed consent by the community (CCPR/C/KEN/CO/3, para. 24).

9. In its concluding observations on Belize in the absence of a report, the Committee advised the State party to provide information on allegations that it had not been complying with decisions of the Supreme Court with regard to Mayan land. The State party should desist from issuing new concessions for logging, parcelling for private leasing, oil drilling, seismic surveys and road infrastructure projects in Mayan territories without the free, prior and informed consent of the relevant Mayan community (CCPR/C/BLZ/CO/1, para. 25).

10. In its concluding observations on the report of Peru, the Committee welcomed the adoption of the Law on the Right of Indigenous or Original Peoples to Prior Consultation (No. 29785). The Committee remained uncertain, however, about which indigenous communities would be entitled to be consulted. While noting that the Law required prior consent before indigenous peoples were transferred from their lands and before storage or handling of dangerous materials occurred, the Committee was concerned that legislation in force did not provide for free, prior and informed consent of indigenous communities concerning all measures which substantially compromise or interfere with their culturally significant economic activities. The Committee therefore recommended to the State party that it ensure that free, prior and informed consent of indigenous communities is obtained before adopting any such measures (CCPR/C/PER/CO/5, para. 24).

B. Concluding observations by the Committee on Economic, Social and Cultural Rights

11. The Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination and the rights of indigenous peoples in its concluding observations on Denmark, Ecuador and the United Republic of Tanzania.

12. In its concluding observations on the report of Ecuador, the Committee reiterated its concern about the failure to undertake consultations as a basis for obtaining the prior, freely given and informed consent of indigenous peoples and nationalities for natural resource development projects that affect them. It was particularly concerned by the fact that Executive Decree No. 1247 of August 2012 was issued without having consulted indigenous peoples and nationalities and that the decree stipulated that any agreements which may be reached must be based on pre-existing public policy measures. The Committee was also concerned that the objectives of the State party's efforts to disseminate information, establish permanent consultative offices and organize tours through areas surrounding proposed mining and hydrocarbons development project sites were confined to the socialization of those projects and that those activities failed to engender an intercultural dialogue that would serve as a basis for obtaining the consent of indigenous peoples and nationalities and respecting their right to be consulted (E/C.12/ECU/CO/3, para. 9).

13. The Committee urged the State party to engage in consultations regarding mining and hydrocarbon resource exploration and development that allowed the peoples and nationalities concerned to freely decide whether or not to give their consent for a given project and that provided sufficient opportunities and time for deliberation and decision-making, as well as for the implementation of cultural safeguards and compensatory remedies. The Committee maintained that such consultations should be conducted in accordance with the community consultation procedures that had been developed and with the resulting decisions. It recommended that the State party consider suspending the implementation of Executive Decree No. 1247 of 2012 and that it instead work with indigenous peoples to design legislative measures to govern the exercise of the right to be consulted and that it then hold prior consultations on the proposed legislation. Finally, the Committee urged the State party to comply with the ruling of the Inter-American Court of Human Rights of 27 June 2012 in the case of *Kichwa de Sarayaku v. Ecuador* (E/C.12/ECU/CO/3, para. 9).

14. In its concluding observations on the report of the United Republic of Tanzania, the Committee expressed concern about forced evictions of vulnerable communities, including pastoralist and hunter-gatherer communities, from their traditional lands, which had resulted in a critical reduction in their access to land and natural resources, threatening their livelihoods in particular. The Committee advised that the establishment of game reserves, the granting of licences for hunting and other projects on ancestral lands be preceded by free, prior and informed consent of the people affected (E/C.12/TZA/CO/1-3, para. 22).

15. In its concluding observations on the report of Denmark, the Committee recommended that the State party take steps to recognize the Thule Tribe of Greenland as a distinct indigenous community capable of vindicating its traditional rights (E/C.12/DNK/CO/5, para. 21).

III. Human Rights Council

A. Resolutions

16. At its twenty-second session, held from 25 February to 22 March 2013, the Human Rights Council considered the question of the realization of the right of peoples to self-determination under agenda item 7 and adopted resolution 22/27 on the right of the Palestinian people to self-determination. In that resolution, the Council reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity, and to establish their sovereign, independent, democratic and viable contiguous State. The Council also urged all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of their right to self-determination.

B. Special procedures

17. In his report to the twenty-third session of the Human Rights Council, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 noted among several recent general developments the fact that on 29 November 2012 the General Assembly voted to recognize Palestine as a non-member observer State. In his opinion, such status is a step on the path to the realization of the collective and inalienable right of self-determination that belongs to the Palestinian people as a whole (A/HRC/23/21, para. 4). He further reported that the unlawful Israeli annexation and demographic manipulations in East Jerusalem had created fundamental threats to the Palestinian right of self-determination and proposed that the International Committee of the Red Cross convene an international conference to draft a convention for occupations that surpass five years or that the manifold issues related to prolonged occupation be examined by a commission of inquiry composed of relevant international law experts (A/HRC/23/21, para. 5 (c)).

18. The Special Rapporteur on the rights of indigenous peoples regularly addresses the right to self-determination of indigenous peoples in his reports to the Human Rights Council. In his report presented at the twenty-first session he recalled that the right to self-determination, which is affirmed for indigenous peoples in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, was a foundational right, without which the full range of indigenous peoples' human rights, both collective and individual, could not be fully enjoyed. Enhancing indigenous self-determination was conducive to successful practical outcomes; studies had shown that indigenous peoples who effectively managed their own affairs tended to fare better across a range of indicators than those who did not (A/HRC/21/47, para. 29).

19. He argued that tackling violence against indigenous women must in some way go along with advancing indigenous peoples' self-determination (A/HRC/21/47, para. 29) and suggested three specific ways in which indigenous self-determination may be enhanced in the context of combating violence against women and girls. Firstly, States should avoid responses to social problems affecting indigenous communities, including violence against women, that tend to limit, undermine or replace indigenous peoples' own authority and self-governance as these ran the risk

of undermining indigenous self-determination and had been shown to be less effective long-term solutions, generally speaking, in comparison to initiatives that indigenous peoples themselves control (A/HRC/21/47, paras. 30 and 31). Secondly, States should increase indigenous peoples' own participation in the design, delivery and oversight of programmes related to preventing and punishing violence against women (ibid., para. 32). Thirdly, indigenous peoples themselves needed to continue to strengthen their own organizational and local governance capacity and their own justice institutions to meet the challenges faced by their communities (ibid., para. 33).

20. He further placed the right of indigenous peoples to set and pursue their own priorities for development, including development of natural resources, as part of their fundamental right to self-determination among the primary substantive rights of indigenous peoples that may be implicated in natural resource development and extraction (ibid., para. 50). He noted that there was a fundamental problem with the current model of natural resource extraction in which the plans are developed with little or no involvement of the affected indigenous community or peoples concerned, and in which the corporation is both in control of the extractive operation and the primary beneficiary of it (ibid., para. 86). He suggested that a new model more conducive to indigenous peoples' self-determination and their right to pursue their own priorities of development is needed, noting that direct negotiations between companies and indigenous peoples may be the most efficient and desirable way of arriving at agreed-upon arrangements for the extraction of natural resources within or near indigenous territories that are fully respectful of indigenous peoples' rights, and they may provide indigenous peoples with opportunities to pursue their own development priorities (ibid., para. 50).

21. In the addendum to his report, on the situation of indigenous peoples in the United States of America, the Special Rapporteur observed that the overall thrust of the policy underlying the federal legislation and programmes adopted in the last few decades — a policy of advancing indigenous self-determination and development with respect for cultural identity — was generally in line with the aspirations expressed by indigenous peoples. The problems signalled were that the laws and programmes did not go far enough to meet those aspirations and that they were underfunded or inadequately administered (A/HRC/21/47/Add.1, para. 71). He also recalled that the United Nations Declaration on the Rights of Indigenous Peoples marked a path towards remedying the injustices and inequitable conditions faced by indigenous peoples, calling on determined action to secure their rights, within a model of respect for their self-determination and distinctive cultural identities (ibid., para. 79).

22. Issues of self-determination are also considered in the communications sent, replies received and follow-up by the Special Rapporteur (see, for example, A/HRC/21/47/Add.3, case No. CAN 3/201 on the situation of the Attawapiskat First Nation and case No. FIN 1/2012 on the situation of the alleged diminishment of Sami self-determination resulting from a decision by the Finland Supreme Administrative Court.

C. Independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian territory, including East Jerusalem

23. When examining the implications of Israeli settlements on the rights of Palestinians, the fact-finding mission also examined their implications on the right of Palestinians to self-determination. The mission noted that the Government of Israel had full security and administrative control over the settlement areas, and effectively controlled the external borders of the Occupied Palestinian Territory. Regional councils composed exclusively of representatives of Israeli settlers exercised planning functions in settlement areas. Neither the Palestinian Authority nor local Palestinian communities had any control over the governance, administration and planning of those areas (A/HRC/22/63, para. 35).

24. It further noted that the settlements, including the associated restrictions, impeded Palestinian access to and control over their natural resources. Eighty-six per cent of the Jordan Valley and the Dead Sea was under the de facto jurisdiction of the settlement regional councils. Settlements exploited mineral extraction and fertile agricultural lands, denying Palestinians access to their natural resources (ibid., para. 36).

25. The fact-finding mission also pointed out that the negative impact of Israeli settlements on the right of self-determination of the Palestinian people extended to the Palestinian people as a whole (ibid., para. 37). The mission considered that the right to self-determination of the Palestinian people, including the right to determine how to implement self-determination, the right to have a demographic and territorial presence in the Occupied Palestinian Territory and the right to permanent sovereignty over natural resources, is clearly being violated by Israel through the existence and ongoing expansion of the settlements (ibid., para. 38).

26. The fact-finding mission concluded that the establishment of the settlements in the West Bank, including East Jerusalem, was a mesh of construction and infrastructure leading to a creeping annexation that prevented the establishment of a contiguous and viable Palestinian State and undermined the right of the Palestinian people to self-determination (ibid., para. 101). The mission considered that, with regard to the settlements, Israel was committing serious breaches of its obligations under the right to self-determination and certain obligations under international humanitarian law, including the obligation not to transfer its population into the Occupied Palestinian Territory (ibid., para. 104). Finally, the mission concluded that the right to self-determination was being violated consistently and on a daily basis (ibid., para. 105).

IV. Conclusion

27. **The right of self-determination is enshrined in article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. During the reporting period, the human rights treaty bodies, and the Human Rights Council, including special procedures mandate holders, have continued to address issues related to the realization of this right.**